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09/842,346

04/25/2001

Robert Roy Keller JR.

5569/70550

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FITCH EVEN TABIN AND FLANNERY  
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CHICAGO, IL 60603-3406

EXAMINER

BROWN, VERNAL U

ART UNIT

PAPER NUMBER

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MAIL DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ROBERT ROY KELLER, JR.,  
JOSEPH JOHN CACCIATORE  
and  
MARK A. McCARTHY, JR.

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Application No. 09/842,346  
Technology Center 2600

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Mailed: March 2, 2009

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Before PAMELA S. BENNETT, *Review Team Paralegal*.  
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER**

According to 37 CFR § 41.37(c) (v) (2005), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters

The “Summary of Claimed Subject Matter” appearing on pages 2-6 of the Appeal Brief filed March 30, 2006 is deficient because it does not map the independent claims to the specification. Correction is required.

Section 1205.03 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 4, October 2005) states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed March 30, 2006 defective, as required by 37 CFR § 41.37(d);
- 2) to notify Appellants to submit a paper which corrects the “Summary of Claimed Subject Matter”;
- 3) to acknowledge and consider the above-noted paper; and
- 4) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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